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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

THOMAS N. SALZANO and

PETER J. SALZANO, individually and as  
officers of NorVergence, Inc.,

Defendants

**CIVIL ACTION NO. 06-**

**STIPULATED PERMANENT  
INJUNCTION AND ORDER AS TO  
INDIVIDUAL DEFENDANT  
PETER SALZANO**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed a complaint naming Thomas N. Salzano and Peter J. Salzano as defendants, individually and as officers of NorVergence, Inc. (“NorVergence”), simultaneously with the filing of this Stipulated Permanent Injunction and Order (“Order”). The FTC originally filed a complaint in this Court on

November 4, 2004, against NorVergence, and on July 22, 2005, a Default Judgment and Order for Permanent Injunction and Monetary Relief was entered against NorVergence (Civ. No. 04-5414).

The FTC's complaint seeks a permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The FTC and defendant Peter Salzano ("defendant") have conferred through counsel and agreed to settlement of this action without adjudication of any issue of law or fact herein, and without any admission of liability by Peter Salzano. This Order resolves all matters arising from the allegations in the complaint. The Commission and Peter Salzano consent to entry of this Order. It is expressly understood and acknowledged by the FTC that in the course of its investigation of this matter, and by his entry into this Stipulated Order, defendant has made no statements to the FTC or taken any other action with respect to such investigation or entry of this Stipulated Order that would constitute a waiver of his privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States.

THEREFORE, the Commission and defendant Peter Salzano having requested the Court to enter this Order, it is ORDERED, ADJUDGED, AND DECREED as follows:

### **FINDINGS**

1. This Court has jurisdiction over the subject matter of this case and jurisdiction over the defendant. Venue in this district is proper.
2. The complaint states a claim upon which relief may be granted against defendant under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
3. The activities of defendant described in the complaint are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

4. Subject to the reservations and acknowledgments set forth above, defendant denies the allegations of the complaint except as to jurisdiction. Entry of this Order shall not constitute an admission of liability by defendant or a determination by this Court that the defendant has engaged in violations of the FTC Act or any act or practice alleged in the Complaint.

5. The defendant has waived all rights to seek judicial review or otherwise challenge or contest the validity of this Order.

6. Each party shall bear its own costs and attorneys' fees. Defendant has waived any claim that he may hold under the Equal Access to Justice Act, 28 U.S.C. § 2412 (as amended), concerning the prosecution of this action to the date of this Order.

7. On January 17, 2005, defendant filed a voluntary petition for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of New Jersey, Case No. 05-11415-RG. The Commission's action against the defendant, including the enforcement of a judgment obtained in this action other than a money judgment against defendant Peter Salzano, is not stayed by 11 U.S.C. § 362(a)(1), (2), (3), or (6) because it is an exercise of the Commission's police or regulatory power as a governmental unit pursuant to 11 U.S.C. § 362(b)(4) and thus falls within an exemption from the automatic stay.

8. Entry of this Order is in the public interest.

## **I. DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. "Bankruptcy Case" means the bankruptcy case filed by Peter Salzano and pending in the United States Bankruptcy Court for the District of New Jersey, Case No. 05-11415-RG.

2. “Consumer” means any natural person, business, non-profit organization, or government agency or entity.
3. “Defendant” means Peter Salzano.
4. “Financing” means any financing arrangement, whether styled as a rental agreement, contract, lease, or otherwise.
5. “Dealer” or “vendor” includes defendant and any person or entity who offers or sells products or services directly or indirectly for the benefit of defendant.
6. “Predominant purpose” means the purpose of any financing (1) as represented to the consumer by the dealer, vendor, or financing agent, or (2) as evidenced by the distribution of proceeds of the financing.
7. “Telecommunications services” does not include: (i) the renting, leasing or sales of copier, facsimile, mailing or shipping equipment or (ii) services primarily related to facsimile service contracts, photocopier service contracts, mail machine or shipping/logistics service contracts similar to the contracts/agreements provided to the FTC by Network Digital Office Systems, Inc. by letter dated January 3, 2006.

## **II. PROHIBITIONS ON MISREPRESENTATIONS**

IT IS ORDERED that defendant and his agents, employees, and all other persons or entities directly or indirectly, fully or partially, under his control or under common control with him, and those persons in active concert or participation with defendant who receive actual notice of this Order by personal service or otherwise, in connection with offering or providing any products, services, or financing to consumers, are permanently restrained and enjoined from making any material misrepresentations, directly or indirectly, expressly or by implication, including:

1. Misrepresenting that any product or service provides or will provide costs savings for a specified or long term.
2. Misrepresenting the nature, terms, effects, or predominant purpose of any financing offered or arranged by defendant or his dealers or vendors, including but not limited to:
  - a. Misrepresenting that payment on a contract or set of contracts or financing will result in the consumer receiving any cost savings for a long term.
  - b. Misrepresenting that a series or group of applications, forms, rental agreements, leases, or sales or financing contracts that consumers sign are part of a unified agreement or transaction under which defendant will provide products or services in exchange for the consumers' continued payments.
  - c. Misrepresenting that a financing contract finances the purchase of equipment or products when a substantial portion of the financing directly or indirectly pays for providing services or other intangibles.

### **III. REQUIRED DISCLOSURES**

IT IS FURTHER ORDERED that defendant, and his agents, employees, and all other persons or entities directly or indirectly, fully or partially, under his control or under common control with him, in connection with offering or providing any telecommunications services or related financing to consumers, shall clearly and conspicuously disclose, in writing and orally during sales presentations:

1. The nature of any long-term commitment, or lack thereof, from any service provider for any long-term services defendant is promising to provide to consumers.

2. That telecommunications equipment offered with the telecommunications services may be of little or no value to the consumer if the services are not provided, when that is in fact the case.

Provided, however, that this section shall not apply to the offering or sale of telecommunications services in conjunction with the offering or sale of goods or equipment, where the services are incidental to the goods or equipment and are small in value in comparison with the goods or equipment.

#### **IV. PROHIBITIONS ON PROVIDING MEANS AND INSTRUMENTALITIES**

IT IS FURTHER ORDERED that defendant, and his agents, employees, and all other persons or entities directly or indirectly, fully or partially, under his control or under common control with him, and those persons in active concert or participation with defendant who receive actual notice of this Order by personal service or otherwise, in connection with the sale or financing of any products or services to consumers, is permanently restrained and enjoined from providing to others, through form contracts where the contract is designed or drafted by the defendant, or otherwise, the means and instrumentalities to:

1. Misrepresent that consumers owe money regardless of whether consumers receive products or services promised to them.
2. File collection suits in forums other than the county where the consumer resides at the commencement of the action or the county where the consumer signed the contract sued upon.

## **V. MONETARY RELIEF**

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$50 million is entered against defendant as restitution for consumer injury. Provided, however, that upon satisfaction of the requirements of this Section, \$40 million of this judgment shall be suspended until further order of the Court pursuant to Section VI of this Order (Right to Reopen) and the remaining \$10 million satisfied by Paragraph V.B of this Order.

B. Pursuant to Section 502 of the Bankruptcy Code, 11 U.S.C. § 502, the FTC shall hold an allowed, noncontingent, liquidated, and undisputed general unsecured claim in the Bankruptcy Case in the amount of \$10,000,000 proposed by defendant. The FTC shall be entitled to participate in any distribution in the Bankruptcy Case paid on account of allowed general unsecured claims in such case, pursuant to Sections 726, 1129, 1325, and 1326 of the Bankruptcy Code, 11 U.S.C. §§ 726, 1129, 1325 and 1326, and in accordance with the priorities of the Bankruptcy Code.

C. The Commission and defendant stipulate and agree to file, within 15 days of the date of entry of this Order, a complaint and agreed judgment in the Bankruptcy Case determining that, solely in the event of a Disclosure Breach (as defined in Paragraph VI of this Order), the suspended judgment amount contained in paragraph V(A), shall be non-dischargeable pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. Section 523. In the event of such a Disclosure Breach, and only in such event, the Commission shall have the right to file a motion in the district court for the termination of the suspension of judgment in accordance with the terms of Paragraph VI of this Order. Nothing in this paragraph or elsewhere in this Order shall be read to modify the FTC's entitlement to participate in any distribution in the Bankruptcy Case to the

extent of the allowed general unsecured claim in the amount provided under Paragraph V(B) of this Order.

D. All funds paid pursuant to this section and Section VI of this Order shall be deposited into a fund administered by the FTC or its designated agent to be used for equitable relief, including, but not limited to, restitution and any attendant expenses for the administration of any monetary fund. In the event that direct restitution for consumers is wholly or partially impracticable or funds remain after restitution is completed, the FTC may apply any remaining funds for any other equitable relief (including consumer information remedies) that it determines to be reasonably related to defendant's practices alleged in the complaint. Any funds not used for this equitable relief shall be deposited into the U.S. Treasury as disgorgement. The defendant shall have no right to challenge the FTC's choice of remedies or distribution of funds under this section.

E. The FTC and defendant acknowledge and agree that no portion of this judgment for equitable monetary relief shall be deemed a fine, penalty, punitive assessment, or forfeiture.

F. The defendant acknowledges and agrees that all money paid pursuant to this Order is irrevocably paid to the FTC for purposes of settlement between the FTC and the defendant, and the defendant relinquishes all rights, title, and interest to that money.

G. Solely in the event of a Disclosure Breach (defined below), the Defendant agrees to the FTC's enforcement remedies provided herein without contesting the facts as alleged in the complaint filed in this action, and without further proof of those facts, in any subsequent litigation filed by the Commission to collect any unpaid amount or otherwise enforce its rights pursuant to this Order, including any non-dischargeability action filed by or on behalf of the FTC in any bankruptcy case.



## **VI. RIGHT TO REOPEN**

IT IS FURTHER ORDERED that:

A. By agreeing to this Order, defendant reaffirms and attests to the truthfulness, accuracy, and completeness of the financial statements that he transmitted to the Commission on July 6, 2005, and the supplement affidavit he signed and transmitted to the Commission on February 14, 2006 (the "Financial Statements"). The Commission's agreement to and the Court's approval of this Order as to the defendant are expressly premised upon the truthfulness, accuracy, and completeness of the Financial Statements, which contain material information relied upon by the Commission in negotiating and agreeing to the terms of this Order.

B. If, upon motion by plaintiff, this Court finds that defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from his Financial Statements ("Disclosure Breach"), the Court shall (i) enter a judgment against defendant in favor of the Commission in the amount of \$50,000,000, which entire amount shall immediately become due and payable, less any amount previously paid by defendant, and (ii) the judgment amount shall be deemed non-dischargeable in any proceeding filed by or on behalf of the Commission pursuant to Section 523 of the Bankruptcy Code, 11 U.S.C. § 523. Provided, however, that in all other respects, this Order shall remain in full force and effect unless otherwise ordered by this Court, and provided further that proceedings instituted under this paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings plaintiff may initiate to enforce this Order.

## **VII. RECORD KEEPING**

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Order and for any business in which defendant has a majority interest or otherwise substantially controls the business (whether or not with a management title such as president, chief executive, or managing partner) defendant and his agents, employees, and corporations, are hereby restrained and enjoined from failing to create and retain the following records:

1. As to each consumer complaint concerning misrepresentation or fraud, whether received directly or indirectly or through any third party, records that shall include, at a minimum:
  - a. The consumer's name, address, telephone number, and account number.
  - b. The written complaint, if any, or a summary of any verbal complaint, and the date of the complaint.
  - c. The basis of the complaint, including the name of any person or entity complained of, and the nature and result of any investigation conducted concerning any complaint.
  - d. Each response and the date of the response.
  - e. Any final resolution and the date of the resolution.
  - f. In the event that no action is taken on the complaint, the reason for the inaction, or if action is taken, the basis for taking the action.
2. As to any telecommunications services offered or sold to consumers with financing, unless the services are incidental to the offering or sale of goods or equipment and are small in value in comparison with the goods or equipment, records that shall include, at a minimum:

- a. A description of all related products and services sold.
- b. Prices of all related products and services, including but not limited to manufacturers' and suppliers' brochures and wholesale and retail price lists.
- c. Cost to defendant's business of all related products and services.
- d. Copies of all forms and contracts related to the transaction that are signed by consumers.
- e. Advertising and promotional materials for the products and services, including but not limited to copies of web site pages.
- f. All sales scripts and sales training materials.

#### **VIII. DISTRIBUTION OF ORDER**

IT IS FURTHER ORDERED that, for a period of five years from the date of entry of this Order, for any business offering or providing telecommunications services to consumers, where defendant has a majority interest or otherwise substantially controls the business (whether or not with a management title such as president, chief executive, or managing partner), defendant shall deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant shall also deliver copies of this Order to all employees, agents, and representatives of that business who engage in offering or providing telecommunications services to consumers. For current personnel, delivery shall be within ten days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. Provided, however, that this section shall not apply to businesses where the offering or sale of telecommunications services is only in conjunction with the offering or sale of goods or equipment, and where the services are incidental to the goods or equipment and are small in

value in comparison with the goods or equipment.

## **IX. COMPLIANCE REPORTING**

A. IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored, for a period of five years from the date of entry of this Order, defendant shall notify the Commission of:

1. Any changes in defendant's residence, mailing addresses, and telephone numbers, within 15 days of the date of that change.
2. Any changes in defendant's employment status (including self-employment) within 15 days of that change. The notice shall include the name and address of each business that the defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of the defendant's duties and responsibilities in connection with the business or employment.

B. IT IS FURTHER ORDERED that 180 days after the date of entry of this Order, defendant shall provide a written report to the FTC, sworn to or affirmed under penalty of perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to, any changes required to be reported pursuant to Paragraph A above.

C. For the purposes of this Order, defendant shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications or other communications to the Commission to:

Director, Northwest Region  
Federal Trade Commission  
915 2nd Avenue, Room 2896  
Seattle, WA 98174

## **X. COMPLIANCE MONITORING**

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within 20 days of receipt of written notice from a representative of the Commission, defendant shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition, and/or provide entry during normal business hours to any business location in the defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. Obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45.
2. Posing as consumers to defendant, defendant's employees, any other entity managed or controlled in whole or in part by defendant, and defendant's dealers and vendors, without the necessity of identification or prior notice.

C. Defendant shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. §

45(a)(1)).

**XI. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

A. IT IS FURTHER ORDERED that defendant, within five days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

## **XII. RETENTION OF JURISDICTION**

A. IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes, including construction, modification, and enforcement of this Order.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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UNITED STATES DISTRICT JUDGE

The parties consent to the terms and conditions of the Stipulated Permanent Injunction and Order as set forth above and consent to its entry.

FOR DEFENDANT:

FOR PLAINTIFF FTC:

Dated: \_\_\_\_\_, 2006

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PETER J. SALZANO (date signed)

WILLIAM BLUMENTHAL  
General Counsel

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